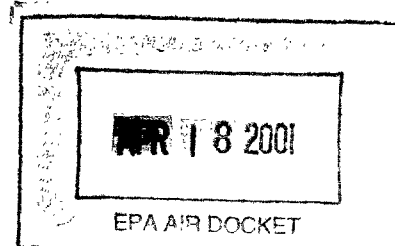


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Summary of Methyl Bromide Critical Use Meeting
Environmental Protection Agency, Washington DC
February 16, 2001



Introduction

After welcoming and introduction, EPA thanked everyone for their attendance and participation. The outline for the meeting schedule and goals was as follows:

- 1) Discussion of EPA's timeline for formulating a critical use process;
- 2) Review of the Montreal Protocol and Clean Air Act (CAA) language relating to Critical and Emergency Use Exemptions; and
- 3) Identification of any issues, questions, and concerns raised by stakeholders.

EPA then stated that stakeholder input is extremely valuable in ensuring that the process is a success, especially because the policy-making process is still in its early stages.

Methyl Bromide Critical Use Exemption

EPA gave a slide presentation discussing the following:

- 1) The steps taken to conform the methyl bromide phaseout with the Montreal Protocol (Protocol) and the CAA;
- 2) The regulatory steps in developing an exemption process;
- 3) EPA's timeline;
- 4) Montreal Protocol language relating the Critical and Emergency Use exemption; and
- 5) Recent Changes to the CAA relating to Critical and Emergency Use exemptions.

International Perspective

EPA began the discussion by assuring attendees that the goal of a methyl bromide phaseout is to phase out methyl bromide, not to harm agricultural interests. Stakeholders should not that the U.S. government, including the Departments of Agriculture and State, not EPA alone, negotiate the critical use exemption criteria agreed by the Parties (countries that have ratified the Montreal Protocol) and that the Parties formulated the language for Critical Use Exemptions. EPA explained that portions of the Essential Use process already in operation for CFCs and other chemicals might possibly be used as a template for the Critical and Emergency Use exemption process, stressing that the essential use process will have to be modified for agriculture. In addition, EPA discussed the Parties understanding of the need for flexibility in the Critical and Emergency Use exemption process to account for regional and crop-specific considerations.

EPA also illustrated how the methyl bromide Critical Use Exemption process could possibly function internationally. Stakeholders should note that with the exception of the January 1, 2005 date set for allowing exempted uses, the timeline for the international process has not yet been set by the Parties. The following steps, based on the Essential Use process for CFCs, summarize a *possible* international process for critical uses:

- 1) National governments submit nominations to the Ozone Secretariat by January 31, 2003;
- 2) The Ozone Secretariat submits nominations to the Technology and Economic Assessment Panel (TEAP), which submits nominations to the Methyl Bromide Technical Options Committee (MTOC) for review;
- 3) MTOC makes a recommendation to TEAP;
- 4) TEAP considers the recommendation and sends it to Parties for debate in meetings (mid 2003);
- 5) The Parties reach a decision (fall 2003) in sufficient time to enable continued critical use after the January 1, 2005 methyl bromide phaseout.

The process may be repeated in the following year to make supplemental requests for 2005, as well as requests for 2006.

Summary of Stakeholder Suggestions and Concerns

Many stakeholders expressed concern, as the methyl bromide phaseout date approaches, over the future of crops currently using methyl bromide. The following bulleted list summarizes stakeholder suggestions and concerns that were introduced and discussed at the meeting. They do not necessarily reflect the opinions of every attendee at the meeting or of EPA; rather, this list is provided as a summary of information offered by stakeholders. Text in bold represents stakeholder comments. All other text represents clarifications made by EPA in response to stakeholder concerns and questions.

The Critical Use Exemption Process

- Critical Use Exemptions will not exist until 2005. Users can acquire methyl bromide until the phaseout, as long as they are willing to pay the market price.
 - Individual methyl bromide users are not currently required by EPA regulations to consume less methyl bromide than in the past. EPA requires only methyl bromide producers and importers to reduce their production and import.
 - The Montreal Protocol negotiates on the basis of methyl bromide consumption, not emissions. Policy has addressed the reduction of emissions only through minimizing consumption; thus, Critical Use exemptions are related to production and consumption, not emissions.
- The Critical Use exemption process is designed to provide users with approved exemptions for calendar year 2005.
 - In order to process a larger number of applications under time constraints, EPA has increased its staff working on methyl bromide.
- The timeline of the application process could possibly be as follows:
 - Application process begins, mid 2002;
 - U.S. government reviews applications, late 2002;
 - EPA submits only those nominations approved by the U.S. government to the Protocol Parties, January 2003;
 - Protocol makes determinations for granting critical uses, December 2002;
 - Applicants notified of Protocol decisions, 2004; and
 - Approved applicants allowed to use methyl bromide, January 1, 2005.
- Critical use exemptions should:
 - Consider use over volume;
 - Be granted to coincide with crop cycles;
 - Be granted on a multi-year basis:
 - The CAA and the Protocol do not specify the time period of granted exemptions—EPA is checking with Protocol officials.
 - Growing conditions and pesticide needs do not change drastically annually. It is therefore unlikely that an exemption would be needed one year and not the next.
 - Requiring single-year exemptions would decrease the security level of growers.
 - Malfunctions in the administrative process are possible; a multi-year exemption would further minimize risk to growers; and
 - Not be denied because of alternatives that are feasible but not available in the U.S. TEAP has noted that 90% of all uses have alternatives that are technically feasible. However, EPA realizes that not all of these alternatives are available in the U.S.

- **The exemption process should:**
 - Be simple and meaningful;
 - Reflect a cooperative effort between EPA, USDA, and stakeholders;
 - Reflect the lessons learned from the 1996 FIFRA Section 18 workshop on creating a workable exemption process;
 - Be timely, reflecting the fact that methyl bromide is the first agricultural product to be considered for an exemption from the phaseout of ozone-depleting substances;
 - Allow growers' associations rather than individuals, to submit applications;
 - Allow for an appeal review process/peer review panel should the viewpoints of applicants and EPA scientists differ; and
 - Be consistent. In the FIFRA Section 18 process, the first state submitting might be required to submit a greater amount of data than another state submitting for the same use. Such inequalities could exist in the critical use process.
- **In order to standardize the critical use exemption process, EPA should:**
 - Distinguish between regional and national significant market disruptions;
 - Define phrases such as, "significant market disruption" and "technically and economically feasible;" and
 - Keep decisions made at the international level (between now and 2005) in harmony with decisions made at the EPA to avoid complications.
 - While the Parties will use a common set of criteria to judge applications, each country designs its own domestic policy.
 - EPA should look to the criteria set by Canada and the Ozone Secretariat before finalizing U.S. criteria.
 - Bill Thomas, a member of MBTOC, and Paul Horwitz, EPA's primary Montreal Protocol negotiator, will help EPA get as close to the thinking at the international level as possible.
- Critical use applications will be sent to the Parties for review regardless of the recommendations given by the TEAP, which does not have the authority to grant or deny exemptions.
- Under Decision IX/6, the TEAP does not consider "significant market disruption", but does consider "technically and economically feasible alternatives." "Significant market disruption" could vary for every country, and therefore the Parties decided that it would be overly subjective for them to review this criterion. However, whether a nominated use is "technologically and economically feasible" will be considered by the Parties.

The Emergency Use Exemption Process

- Emergency Use exemptions represent a subset of Critical Use exemptions. There will be no deadline for emergency use applications as there will be for critical use applications. Emergency uses will only be granted after the phaseout and will be dealt with on a rolling basis.
 - To understand the relationship between Emergency Use exemptions and Critical Use exemptions, refer to Decision IX/6 and IX/7 of the Montreal Protocol, where it is stated that the Secretariat and the TEAP will evaluate Emergency Use exemptions according to the Critical Use criteria.
- The Emergency Use exemption provision was developed for a situation where the use of methyl bromide is imperative, including:
 - A situation where one needs an exemption in 2005 after Critical Use exemptions for 2005 have been granted.
 - If a grower, who had previously used methyl bromide, switched to an alternative substance which became unavailable after the deadline for application submissions.

- EPA would like stakeholder input concerning the issue of who should determine whether a use is considered an emergency, as this information is not specified in the Protocol.

Methyl Bromide Alternatives

- Information about alternatives should be available so that critical use applications:
 - Are robust and complete without being overly burdensome; and
 - Discuss all relevant alternatives.
- In developing a list of alternatives, the EPA should:
 - Make information available regarding the effectiveness of alternatives by crop and region;
 - Recognize that field trials of alternatives take a full year; and
 - Acknowledge the flaws of existing alternatives. For example, in the forestry industry, saplings on which alternatives have been used are producing 20 percent less wood, leading to decreased photosynthetic activity and carbon sequestration.
- EPA's Office of Pesticide Programs (OPP) and the Office of Air and Radiation (OAR) are working together to identify feasible alternatives. The USDA/EPA working group is creating a list of potential alternatives by looking at issues such as the efficacy and regulatory constraints of alternatives.

Closing Statement

EPA thanked everyone for attending the meeting and reminded attendees that the next meeting would be on March 19, 2001, at 9:00 am, at the same location (EPA, 501 3rd Street, NW, Washington, D.C.). Stakeholders were encouraged to contact Amber Moreen or Jabeen Akhtar (also working on critical and emergency uses) with any comments, suggestions, and concerns at 202-564-9295 (moreen.amber@epa.gov). The facilitator encouraged everyone to contact EPA, (all EPA email addresses are lastname.firstname@epa.gov), especially concerning comments on the terms, "significant market disruption" and "technologically and economically feasible".

List of Attendees

Jabeen Akhtar, OAR/EPA
Dan Botts, Florida Fruit & Vegetable Association
James Butler, NOAA
Margriet Caswell, USDA
Stanley Cichowicz, FDA
Betsy David, Stratus Consulting
Jim Delaney, Van Waters & Rogers
Tom Duafala, Trical, Inc.
Charlie Garlow, OECA/EPA
Larry Glaze, FDA
Steve Godbehere, Hendrix & Dale, Inc.
Rachael Goodhue, UC Davis
Dan Haley, Haley & Associates
Tracy Heinzman-Smith, Howrey & Simon
Charles Herrick, Stratus Consulting
Dr. Charles Hinton, Florida Strawberry Growers Association
Paul Horwitz, OAR/EPA
Amy Kimball, Mead Corporation
Tom Land, OAR/EPA
Susan Lawrence, OPPTS/EPA
Gabriel Ludwig, Shramm & Williams, representing Western Growers Association
Matt Lynch, Albemarle
David McAllister, GLCC
Diane McConkey, OGC/EPA
Douglas McNeal, USTR
Amber Moreen, OAR/EPA
William "Chip" Murray, American Forest & Paper Association
Phil Ross, OPPTS/EPA
Edward M. Ruckert, McDermott, Will & Emery; Crop Protection Coalition
Steve Rutz, Florida Dept. of Agriculture
Jim Schaub, USDA
Lauren Shapiro, ICF Consulting
Adam Sharp, American Farm Bureau Federation
Robert Shramm, Shramm & Williams, representing Western Growers Association
Sue Stendebach, OAR/EPA
David Sullivan, Sullivan Environmental Consulting; representing Metam-Sodium Task Force
Bill Thomas, OAR/EPA
Al Tillman, Ameribrom
Ken Vick, USDA
Vern Walter, WAW Inc.